

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EUGENE COSEY,)
)
Petitioner,) 4:18CV3078
)
v.)
)
STATE OF NEBRASKA, and) MEMORANDUM AND ORDER
ADAMS COUNTY,)
)
Respondents.)
)

After initial review under [Rule 4](#) of the *Rules Governing Section 2254 Cases in the United States District Courts*, I will dismiss the § 2254 petition without prejudice.

The Petitioner admits that he has not yet been convicted or sentenced but attacks the pending prosecution apparently because he thinks his speedy trial rights have been denied. He does not challenge any pretrial custody decision. Accordingly, this action is premature and must be dismissed without prejudice. *See, e.g., Hall v. United States, No. 09-CV-4095, 2010 WL 143683, at *3 (W.D. Ark. Jan. 8, 2010)* (“[T]his Court lacks jurisdiction to address those issues in the context of a habeas corpus proceeding prior to a sentence being imposed, and the appropriate proceeding for all of the issues raised in this Petition is the pending criminal proceeding.”), *aff’d*, 365 F. App’x 39 (8th Cir. 2010).

A petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [28 U.S.C. § 2253\(c\)\(2\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in [Slack v. McDaniel, 529 U.S. 473](#),

484-485 (2000). I have applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. The petition for a writ of habeas corpus under § 2254 (filing no. 1) is dismissed without prejudice.
2. No certificate of appealability has been or will be issued.
3. A separate judgment will be issued.

DATED this 1st day of June, 2018.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge